whether based upon trial or upon an accepted plea of guilty, the court invites assistance from the prosecution to enable him to assess the penalty. He said (pp. 121 and 122):—

"The court is entitled to such assistance from the prosecution. The prosecution should state all it knows, believes or can honestly argue or plead in favour of the accused. Nothing should be alleged by the prosecution against the interests of the accused which cannot be substantiated. If there is any suspicion against the accused which the prosecution believes may be proved after investigation, a postponement should be asked for without the suspicion being enunciated. No matter of suspicion against the accused should be enunciated, only matters of known fact or argument arising out of proved facts. Every matter of fact or argument so adduced against the accused must be explained to the accused. The accused must be given an opportunity of meeting argument with argument. The accused must be given an opportunity of admitting or challenging any new fact so alleged against him. If the accused challenges any such fact, the prosecution may withdraw its allegation, which the court must then hold to be baseless. If the prosecution takes up the accused's challenge, then the issue should be tried and decided according to the rules of evidence and procedure provided by law, after postponement in favour of either side, if necessary, any reasonable doubt moveover being always solved in favour of the accused."

The probation report contains some very interesting matters as follows:—

"Since 1965 the lad has been engaged as a daily paid mosaic worker under a Kepala, Enche' Ch'ng Chow Huat who lives at 150, Noording Street, Penang. At the time of his arrest he was still working under Enche' Ch'ng.

Enche' Ch'ng Chow Huat the lad's employer was interviewed on 7.12.67 and he said that he has found the lad to be a conscientious worker and he has nothing bad to say about him. He is prepared to employ him again, if the lad is given a chance by the court. The mother is prepared to stand surety for his future good behaviour. She also promises to exercise stricter control over the lad to keep him away out of trouble."

Instead the learned magistrate chose to act solely upon the opinion of the probation officer which I think he ought not to have given where he says:—

"Although the mother would like to stand surety for his good behaviour, she would be unable to exercise sufficient control over him. The offender does appear to be in need of stricter discipline than he can get at home."

In my view the magistrate should have put him on bond and allowed the mother to stand surety and if there is a breach then he could be brought back to be dealt with.

In the circumstances therefore I have no hesitation whatsoever in setting aside the order for detention in the Henry Gurney School.

I may add that when the learned magistrate stated in his grounds of judgment that "by virtue of the proviso to section 28(b) of the Juvenile Courts Ordinance, 1947 the Commissioner of Prisons can, in his absolute discretion, shorten the period of detention for reasons which appear to him to be sufficient or may release the young person on licence for such period and upon such conditions as he may deem fit to impose" his imposition of 3 years detention of the juvenile shows that he has shirked responsibility to decide how to deal with the offender on the facts presented to him. The offender should be punished for his offence in accordance with the law and he should not be made to suffer a longer period of detention solely because it is thought that he needed disciplining. Unless he behaves himself, I imagine, he would have to undergo disciplinary punishment in the Henry Gurney School and this obviously would tend to induce the boy to practice deception for the purposes of shortening his period of detention. It is not known and I certainly do not see why in a case of this sort a lad who is earning his livelihood, who was not armed and who was not shown to have committed any damage or other act of violence during the riots should be unduly penalised because of his age.

One other observation, it is abundantly clear that the learned magistrate in making the order was acting outside his jurisdiction. It is competent only for a Juvenile Court to make the order he did and he was then acting in his capacity of magistrate.

Order of detention set aside.

Solicitors: *Lim, Lim & Oon.*

CHUA KAH WEE & ORS. v. CHUA GEOK ENG

[O.C.J. (Chua J.) May 31, 1968]
[Singapore — Suit No. 823 of 1965]

Trusts and Trustees — Express trust — Property conveyed by father to 4 children absolutely — Verbal request that they should hold the property for the father for life with remainder to themselves and six other children — Title deeds held by father — Purchase price paid by father — Defendant (one of the 4 children) denied that she was a trustee and claimed that she was absolutely entitled to ¼ share on the ground that the father had allowed her to purchase the property below its market value and that she had so purchased it — Document relied on by defendant as evidence of purchase held a forgery — Alleged illegality of purpose.

The plaintiffs, who were the first two registered owners and the administrator of the third registered owner, of a piece of land, claimed against the defendant, the fourth registered owner, a declaration that the defendant held the property on trust for their father for life with remainder to his ten children or their estates as tenants in common absolutely. The court found that in 1953 the father of the four registered owners conveyed the property to them, having previously verbally requested them to hold the property for himself for life and after his death for themselves and his six other children; that the defendant accepted the trust, that the father retained the title deeds, enjoyed the rents and paid the outgoings and that the property had been voluntarily mortgaged twice by the plaintiffs and by the defendant at the request of the father and for his benefit. The defendant claimed ¼ share of the property absolutely and alleged that she had been permitted by the father to purchase the property at below its market value, and produced a document which was signed by

the father and which purported to record the purchase by the defendant. The court however found that the words of the document had been superimposed on a blank sheet of paper which the father had previously signed, and that the document was a forgery. The defendant did not plead but alleged during the course of the hearing that the purpose of the father's transaction was to enable her father to escape payment of income tax because the children's rate of tax was lower than the father's.

Held, allowing the claim: (1) the trust in favour of the 10 children had been proved;

(2) there was one exception to the rule that the defendant must plead illegality of purpose before she could rely upon it, and this exception was where the allegedly illegal purpose was put forward by the plaintiffs themselves as the reason for the transfer of the property. In this limited case, illegality need not be pleaded by the defendant: *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1] followed. In the present case, however, the plaintiffs did not put forward an illegal purpose as the reason for the transfer, and the defendant should, therefore have pleaded illegality if she wished to rely on it;

(3) in any event, the evidence did not establish that the purpose of the transaction was to enable the father to pay a lower rate of income tax.

Case referred to:—

(1) *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143, P.C.

CIVIL SUIT.

K. A. O'Connor for the plaintiffs.

C. H. Smith for the defendant.

Cur. Adv. Vult.

Chua J.: The plaintiffs in this case claim as trustees of the property known as Lot 69 T.S. XXIV Singapore (hereinafter called "the Rochalie Drive property") against the defendant as co-trustee of the Rochalie Drive property and personally for:—

(1) A declaration that the Rochalie Drive property now standing in the names of the plaintiffs and the defendant as tenants in common in equal shares is held by them on trust for their father Chua Cheow Tien for life with remainder to the said Chua Cheow Tien's ten children or their estates as tenants in common absolutely.

(2) Removal of the defendant as trustee of the the Rochalie Drive property.

(3) All consequent and necessary vesting and other orders in respect of the Rochalie Drive property.

In the statement of claim it is pleaded that on the 26th August, 1953, Chua Cheow Tien, the father of the parties to these proceedings, conveyed the Rochalie Drive property to his 4 eldest children namely, the first and second plaintiffs, Chua Poh Keow (since deceased) and the defendant as tenants in common in equal shares on the express trust and understanding that the said four children would hold the property on trust for their father for life with remainder to the ten children of the said Chua Cheow Tien by his first wife.

In her defence the defendant admits that Chua Cheow Tien conveyed the Rochalie Drive property to the plaintiffs and to her as tenants in common in equal shares. She, however, denies that the said conveyance was on any trust, express or otherwise or on any understanding, either as alleged in the statement of claim or at all. She pleads that the said conveyance was for a consideration of $53,000 and that she paid to Chua Cheow Tien one-fourth of the said sum namely $13,250. The defendant counterclaims for a declaration that she is beneficially entitled to one undivided one-fourth share in the Rochalie Drive property free from encumbrances and free from any trust either express or otherwise.

Chua Cheow Tien's evidence was shortly this. He has nine daughters and one son by his first wife Yap Kim Neo, who died in 1948. The first and second plaintiffs, Chua Poh Keow and the defendant are four of his daughters by his first wife. In 1948 he bought the Rochalie Drive property for $53,000. On the 11th June, 1953, he held a memorial ceremony for his late mother at his house. All the nine daughters by his first wife were present. He told his nine daughters of his desire to give away the Rochalie Drive property to the ten children by his first wife. It is best that I set out in full what he said to his daughters:—

"I told my nine daughters present that I desired to give away my property No. 2 Rochalie Drive to my 10 children by my first wife in equal shares after my death and that during my life time this property was to be held in trust for the said 10 children by four of them — the defendant, Chua Kah Wee, Chua Kah Bin and Chua Poh Keow. I further told them that during my life time I would reserve the liberty for myself to dispose of this property either by sale or by mortgage or by any other way necessary. All the children present agreed to these conditions and in fact this property had been mortgaged subsequently, twice up to date."

On the 26th August, 1953, he conveyed the Rochalie Drive property to his four daughters as tenants in common. The consideration stated in the conveyance was $53,000 but in fact he did not receive any money. The stamp fees and the solicitors' fees for the conveyance were paid by him. He kept the title deeds and collected the rents from the property and he paid the assessment. He gave his daughters money to pay the income tax due on the property. At first he gave $400 cash per annum to the defendant's husband to pay the income tax but later he got his daughter Chua Kah Wee to make out cheques in favour of the defendant. Chua Poh Keow died in 1957 and Letters of Administration were granted to her husband Chia Kian Pang, the 3rd plaintiff. In 1959 Tian Hup & Co. Ltd., of which he was (and still is) a director and principal shareholder entered into a contract with the

Commander-in-Chief, Far East Land Forces, Singapore, and the United Chinese Bank Ltd. guaranteed the due fulfilment and performance by Tian Hup & Co. Ltd., of all the terms and conditions of the contract between Tian Hup & Co. Ltd. and the Commander-in-Chief and the payment for all losses and damages. On the 21st October, 1959, the plaintiffs and the defendant at his request mortgaged the Rochalie Drive property to the United Chinese Bank Ltd. to keep the bank indemnified against all actions, proceedings, liability, claims, damages, costs and expenses in relation to or arising out of the guarantee which the bank had signed. In 1960 Tian Hup & Co. Ltd. entered into a similar contract with the Commander-in-Chief, Far East Land Forces, Singapore, and the United Chinese Bank Ltd. gave a similar guarantee. On the 30th September, 1960, the plaintiffs and the defendant at his request again mortgaged the Rochalie Drive property to the United Chinese Bank Ltd. for a similar purpose. In 1963 he negotiated to sell the Rochalie Drive property to the Singapore Trading Co., Ltd. for $300,000. He spoke to his daughters and promised to pay each of his ten children by his first wife $10,000 out of the proceeds of sale. The first, second and third plaintiffs agreed to the sale and signed the agreement of sale but the defendant refused to sign. On the 13th September, 1963, on his instructions his solicitors wrote to the defendant stating that the Rochalie Drive property was held by the defendant on trust for her father and requesting her to attend at the solicitors' office to sign the agreement of sale but by letter of the 20th September, 1963, signed by the defendant she denied the allegations contained in the letter which was sent to her. On the 25th March, 1964, his solicitors again wrote to the defendant stating that she held the property on trust for her father and requesting her to confirm that the property was held on trust so that the sale of the property could be proceeded with. By letter of 8th April, 1964, the defendant denied that the property was held by her on trust for her father. On the 11th January, 1965, the defendant's solicitors wrote to his solicitors saying that they had gone into the matter fully and had advised the defendant that she was entitled to one-fourth share of the Rochalie Drive property.

The first and second plaintiffs, and Chua Ah Lian and Chua Ah Sye, two other daughters of Chua Cheow Tien by his first wife, gave evidence, and they all supported the evidence of their father. The first plaintiff, Chua Kah Wee, further said that the defendant asked her father for $400 each year to pay the income tax due on the Rochalie Drive property. At first cash was given to the defendant but fearing that the defendant would deny having received the money so her father asked her to issue cheques to the defendant. (Five cheques were produced in court, each for $400 and signed by her in Chinese and made out in favour of the defendant and were issued in November, 1959, May, 1960, April, 1961, March, 1962, and March, 1963.) Her father reimbursed her later.

Another witness gave evidence about these cheques. He was Teo Yeow Hong, the husband of the second plaintiff. His evidence was this. He was a director of Guan Choon & Co. Ltd. and a shareholder of Lian Hup Tobacco Co. Ltd. The defendant's husband brought to him the cheque of November, 1959. It had already been endorsed by "Chua Gek Eng". The defendant's husband asked him to exchange the cheque for cash. He telephoned Lian Hup Tobacco Co. Ltd. and asked them to exchange the cheque for cash and told the defendant's husband to go there. The cheques of May, 1960, April, 1961, March, 1962 and March, 1963, were brought to him by the defendant's husband. The cheques had been endorsed by "Chua Gek Eng". The defendant's husband asked him to exchange the cheques for cash. He gave the defendant's husband $400 on each occasion and paid the cheque into the bank account of Guan Choon & Co. Ltd.

The defendant's evidence was shortly this. In 1953 she lived at 239A New Bridge Road, Singapore, which was on the first floor. The ground floor of the building, No. 239, was occupied by See Huat & Co. in which her husband was a partner with three others. In 1953 her father came to see her and told her that he would sell the Rochalie Drive property at cost and that it would be in her interest to buy a quarter share for $13,250. She told her father that she did not have the money to buy whereupon he offered to lend her the money and said that she could repay by instalments out of her share of the rents from the property. She was very happy and gratefully accepted his offer. On the 26th August, 1953, the conveyance was signed and her father paid all the fees as she had no money. That very evening her father came to her house and brought with him a document in English which was explained to her by her husband, Tan Choo Keng. The document (Ex. D.1) reads as follows:—

> "An agreement made the 26th day of August, one thousand nine hundred and fifty three (1953) between Madam Chua Gek Eng of No. 239-A, New Bridge Road, Singapore (hereinafter called 'the borrower') of the one part and Mr. Chua Cheow Tien of No. 225, Telok Ayer Street, Singapore (hereinafter called 'the lender') of the other part.
>
> Whereas the lender has agreed to advance to the borrower the sum of dollars thirteen thousand two hundred and fifty ($13,250) only, upon having the repayment of the same with no interest secured in manner hereinafter mentioned.
>
> It is hereby agreed as follows:—
>
> In consideration of the sum of dollars thirteen thousand two hundred and fifty ($13,250) only, now

paid by the lender to the borrower (the receipt whereof the borrower hereby acknowledges) the borrower hereby covenants with the lender that the borrower will on the 26th day of August, 1958 pay to the lender the sum of dollars thirteen thousand two hundred and fifty ($13,250) only."

She told her father that in case she could not repay in five years he should give her more time to pay. He agreed. Her father said that two witnesses were required and her husband went downstairs to fetch two of his partners — Seow Tiong Chan and Goh Chin Beng. The document Ex. D.1 was then signed by her and her father and Seow Tiong Chan and Goh Chin Beng signed as witnesses. Her father then kept the document Ex. D.1. Her father handed her the title deeds to the property and she kept them in a deposit box at a bank. She asked her husband to collect the rents of the Rochalie Drive property and hand them to her father to pay towards the loan and her husband kept the accounts. At that time her husband was running a business of rent collecting and he was collecting the rents of her father's properties for four years. After that her father collected the rent of the Rochalie Drive property. In due course her share of the rents was sufficient to pay off the $13,250 loan. After the loan was repaid her father handed the document Exhibit D.1 to her husband who kept it. The property tax of the Rochalie Drive property was paid by her father out of the rents collected but the income tax due on the property was paid by her husband. In 1959 at the request of her father she took out the title deeds of the Rochalie Drive property and mortgaged the property to the United Chinese Bank Ltd. Later when the property was reconveyed to her, the title deeds were not returned to her. In 1960 at the request of her father the Rochalie Drive property was again mortgaged to the bank. Before the contract with the Commander-in-Chief, Far East Land Forces, had expired her father wanted to sell the Rochalie Drive property for $300,000 but she would not agree as she wanted more than $75,000 for her quarter share. She denied that she was present at her father's house on the 11th June, 1953. She denied that she received $400 per year from her father to pay the income tax. She said that her father said that he would give her $400 per annum but he never did. She admitted receiving the cheque for $400 issued in November, 1959, from her sister Chua Kah Wee and that she endorsed her name at the back of the cheque in English but that was a repayment by Chua Kah Wee of a loan which Chua Kah Wee took from her. She denied she received the other cheques from Chua Kah Wee and she said that the signature "Chua Gek Eng" in English on the back of those cheques were not hers.

The defendant called Seow Tiong Chan to give evidence. Seow Tiong Chan said in evidence that he signed Ex. D.1 as a witness together with Goh Chin Beng at the first floor of No. 239 New Bridge Road. There were several persons present but he could not remember who they were and he did not remember if he saw anyone signing it before he signed. He said he knew the defendant but he could not remember if she was present. Goh Chin Beng died in September, 1967.

Tan Choo Keng, the defendant's husband gave evidence to this effect. In 1952 he was a partner in See Huat & Co. and also a partner in Aljunied, Alkaff, Tan & Co. which carried on business of rent collecting until 1954. From August, 1951, to January, 1958, he acted as secretary of Tian Hup & Co. Ltd. and during that period he helped his father-in-law, Chua Cheow Tien, in the latter's personal affairs. In 1953 his father-in-law wanted to sell the Rochalie Drive property to his wife and to three other daughters. His wife told her father that she had no money but the father said that he would allow her to owe him first and she could collect the rent and repay him at a later stage. On the 26th August, 1953, his father-in-law signed the conveyance and he paid part of the fees. Sometime in August, 1953, his father-in-law came to the house with the document Ex. D.1. His father-in-law told him to get two witnesses and he went down to see See Huat & Co. and got two of his partners to come upstairs. He read over the document Ex. D.1 to them and his father-in-law, his wife and the two witnesses signed it. The title deeds to the property were handed over to his wife by his father-in-law and she kept them in a bank. Exhibit D.1 was kept by his father-in-law. The rents of the Rochalie Drive property were at first collected by Aljunied, Alkaff, Tan & Co. for 16 months when the company was wound up and after that he himself started to collect the rents. The rents were eventually paid over to his father-in-law. The rent was at first $650 per month and later increased to $675. His wife's share was $107.25 per month and later $108. He made a note of the rents collected every month in a note book (which was produced, Ex. D.4). According to his note book the balance due by his wife to his father-in-law on the 31st June, 1963, was $545, which he paid to his father-in-law in cash in July, 1963, and his father-in-law handed to him the document Ex. D.1. He paid the income tax due on his wife's quarter share in the Rochalie Drive property from 1953 up to 1966. His father-in-law paid the property tax due on the Rochalie Drive property out of the rents. At the request of his father-in-law he typed out and got his wife's three sisters to sign receipts that they had received their shares of the rents for each year from 1953 to 1957 (fourteen receipts were produced in court, Exhibits D.6 to D.6N, all signed in English.) He denied the allegations of Teo Yeow Hong about the cheques.

Chua Cheow Tien in his evidence admitted that the signature on Ex. D.1 was his but he said that it was not signed by him as an agreement with his daughter, the defendant. It was intended to be used for a letter to be written to a Government department in connection with the proposed construction of a cinema. His story of how he came to sign Ex. D.1 was this. In 1956 he intended to build a cinema on one of his properties. Plans were prepared to be submitted to the proper authorities. Tan Choo Keng, his son-in-law, was then employed by him. On the 3rd April, 1956, Tan Choo Keng said that it would be necessary to write four letters to the various Government departments and gave him eight pieces of blank paper and asked him to sign them in blank and he did so. Four were for letters and four for copies of the letters. Tan Choo Keng took them away to prepare the letters. Tan Choo Keng also asked for $650 cash on the same day and said that it was the fees to be paid to the authorities. He gave Tan Choo Keng the $650. Ex. D.1 was one of the blank papers which he signed. His later found out that the $650 was not paid to the authorities and on the 8th July, 1964, he wrote a letter (Ex. P.3) through his solicitors, to Tan Choo Keng demanding the return of the $650 and requesting the return of the eight blank papers which he had signed and handed to Tan Choo Keng for use in connection with the building of the cinema and alternatively if the papers had been used he would like to know for what purpose they had been so used. By letter dated the 15th July, 1964 (Ex. P.4), Tan Choo Keng denied the allegation contained in the letter of the 8th July.

Tan Choo Keng in evidence denied the allegation of Chua Cheow Tien that he received eight blank sheets of paper which had been signed by Chua Cheow Tien on the 3rd April, 1956. He said that the story of Chua Cheow Tien was untrue. In the first place the cinema plan was prepared and submitted in 1952 and was disapproved in May, 1952. Thereafter his father-in-law and he went to Allen & Gledhill and the solicitors corresponded with the authorities. Secondly, on the 13th December, 1954, he sent a copy of Ex. D.1 to the Assistant Comptroller of Income Tax. However, the Assistant Comptroller of Income Tax was not asked to produce the copy of the agreement which was sent to him by Tan Choo Keng. Chua Cheow Tien was not cross-examined on his statement that the cinema plan was submitted to the authorities in 1956 and on his statement that the blank sheets of paper were given to Tan Choo Keng on 3rd April, 1956. Could Chua Cheow Tien have made a mistake when he said the cinema plans were prepared in 1956?

Chua Kah Wee and Chua Kah Bin both said in evidence that the receipts produced by Tan Choo Keng (Exhibits D.6A to D.6N) were not signed by them. Chua Kah Wee said that she could sign her name in English if she wanted to. (She was asked to sign her name in English which she did.) Chua Kah Bin said that she did not know how to sign in English but she could write her name in English if she wanted to. (She was asked to copy the writing "Chua Kah Bin" and she did.)

So much for the evidence.

The first question for consideration is whether or not the defendant's story that she bought a quarter share in the Rochalie Drive property and paid for it is true. If her story is true that will dispose of the whole of this case.

Now, the impression I gained from seeing and hearing the defendant and her husband giving evidence was that they were not telling the truth. On the other hand, Chua Cheow Tien and the plaintiffs struck me in the witness box as witnesses of truth.

It seems to me that the defendant's story is highly improbable. Why should her father ask her to buy a quarter share in the property when the other three daughters were not asked to buy? If her father had wanted her to sign a document of loan why was it not signed at P.Y. Tan's office on the day when her father signed the conveyance and she was present? Why should her father bring the document later that evening to her house when there might be difficulty in getting two witnesses? Why should the father hand over the title deeds to her when she held only a quarter share and had not even paid for it?

The defendant produced the document Ex. D.1 to substantiate her story. She called Seow Tiong Chen, one of the persons who signed as a witness, but his evidence does not help her case. Seow Tiong Chen could only say that he signed the document as a witness. Not only was he unable to remember who were the other persons who signed it but also if anyone signed it before he signed. He said that he knew the defendant but he could not remember if she was present.

I think Chua Cheow Tien's story about signing the blank sheets of paper is probably true. There is no doubt that when he said that the blank sheets were signed in 1956 he made a mistake as to the year. If he did not sign the blank papers why should he ask the defendant's husband about them on 8th July, 1964, (Ex. P.3)? Was he laying the foundation for the story which he told the court in 1967? It seems to me that that is very improbable.

It seems to me that the defendant could have satisfied the court as to the authenticity of Ex. D.1 if she had asked the Comptroller of Income Tax to produce the copy of it which was sent, according to her husband, to the comptroller on the 13th December, 1954. As the comptroller

was not called I must presume that his evidence would be unfavourable and would not support the evidence of her husband.

For these reasons I have come to the conclusion that Ex. D.1 is not an authentic document.

The defendant's husband produced the note book Ex. D.4 to substantiate his statement that the loan had been repaid. In this note book were recorded his personal account, the entries of which were in ink, and his wife's account with her father, the entries of which were in pencil and in the other half of the note book. Having carefully examined the note book I must say that it certainly looks to me that her account has been specially written up for the purpose of this case.

The onus is on the defendant to establish that she bought and paid for the quarter share in the Rochalie Drive property. She has failed to discharge that onus.

The next question for consideration is whether the Rochalie Drive property is held on trust by the plaintiffs and the defendant for their father, Chua Cheow Tien, for life with remainder to the ten children of Chua Cheow Tien, by his first wife.

The evidence adduced by the plaintiffs, which I accept, clearly showed that there was a trust for the father for life with remainder to the ten children. The defendant said that there was no trust and that she was not present at the gathering in the father's house on the 11th June, 1953. All her sisters, however, said was that there was a trust and that she was present at the gathering. I have no doubt that the defendant was present at this gathering and heard what the father said about the property and that she accepted the trust. It has clearly been proved that the defendant received $400 a year from her father to pay for the income tax due on this property and on another property. It was admitted by the defendant that the rents were paid over to the father. It was also admitted by the defendant that the property tax on the property was paid by the father. I find that the title deeds were held by the father. In my view the trust has clearly been established.

It is submitted by counsel for the defendant that the evidence disclosed a conspiracy to defraud the income tax department and the court should not assist the plaintiffs, who were parties with their father in the conspiracy, to achieve this illegal purpose and that the court should treat the conveyance to the defendant as an advancement to her. The case of *Palaniappa Chettiar* v. *Arunasalam Chettiar*,[1] was cited in support of this submission. I am unable to find that the transfer by the father to the four daughters was made for a fraudulent or illegal purpose namely to defraud the income tax department as there is no evidence of it. Furthermore, I do not think that the defendant should be allowed to suggest that the transaction was entered into for a fraudulent or illegal purpose. She has not pleaded it distinctly and she has not given any evidence about it. In this case the plaintiffs had no reason to disclose any illegality and did not do so. Therein lies the distinction between *Palaniappa Chettiar* v. *Arunasalam Chettiar* and the present case.

In the result there must be judgment for the plaintiffs with costs and the counterclaim of the defendant is dismissed with costs.

There will be an order in terms of prayers 1 and 2 of the plaintiffs' claim.

Judgment for the plaintiffs.

Solicitors: *Drew & Napier; Laycock & Ong.*

CHUA CHEOW TIEN v. CHUA GEOK ENG & ANOR.

[O.C.J. (Chua J.) May 31, 1968]
[Singapore — Suit No. 824 of 1965]

Trust — Advancement — Presumption of — Property bought by father in name of wife and child — Verbal request that they should hold on trust for him absolutely — Title deeds held by father — Defendants' acts and declarations — Sufficient evidence to rebut presumption — Alleged illegality of purpose.

The plaintiff (the father) brought the action against the defendants (his daughter and wife) for a declaration that a piece of land which was registered in the name of the defendants was held by them on trust for the plaintiff. The plaintiff bought the property in 1951 and placed it in the names of the defendants, having previously verbally requested them to hold it on trust for him absolutely. The plaintiff as the learned judge found, retained the title deeds, enjoyed the rents from the property and paid the property tax and income tax. The defendants did not plead but alleged during the course of the hearing that the purpose of the transaction was to enable the father to avoid income tax since the daughter's rate of tax was lower than the father's. The property was voluntarily mortgaged twice by the defendants at the request of the plaintiff and for his benefit.

In 1962, the plaintiff asked for the return of the property. The defendants agreed, and signed a letter authorising the sale of the property and acknowledging that the surplus remaining after discharge of the mortgage should be returned to the plaintiff. The second defendant also signed a conveyance of the property back to the plaintiff.

Held, allowing the claim: (1) if a person buys property in the name of his wife or child there is a rebuttable presumption that the legal and beneficial ownership of the property is in the wife or child. The onus is on those who seek to rebut the presumption to establish that the property is held on trust. The admissible evidence in rebuttal is limited to acts, circumstances and declarations leading to or forming part of the transaction or so immediately following and connected with it as in effect to be contemporaneous with or form part of it and such admissible evidence can be used either for or against the party who did the act or made the declaration. Subsequent acts and declarations are ad-